

Appl. No. 10/700,811  
Atty. Docket No. CM2706L  
Amdt. Dated 09/21/2006  
Reply to Office Action of 06/21/2006  
Customer No. 27752

### REMARKS/ARGUMENTS

Claims 1, 3, 8 to 17 and 28 are currently under consideration. Claim 1 is amended herein to make the fabric treatment composition comprise an "amino silicone." Support for the inclusion of this element is found in, at a minimum, Page 25, line 19 to Page 26, line 17. Claim 1 is also amended herein to make the cationic polymer a "silicone polymer." Support for the inclusion of this element is found in, at a minimum, Page 2, lines 18 to 27. Claim 1 is also amended herein to make the anionic polymer a "non-silicone containing polymer." Support for the inclusion of this element is found in, at a minimum, Page 2, lines 18 to 27. Claim 3 is amended herein to remove "cationic polymer is a silicone polymer and wherein the anionic polymer is a non-silicone-containing polymer" from the claim. Claim 3 is also amended herein to make the amino silicone have a "viscosity of from  $0.001\text{m}^2/\text{s}$  to  $0.05\text{m}^2/\text{s}$ ." Support for the inclusion of this element is found in, at a minimum, Page 25, lines 26 to 29. Claims 2, 4 to 7, 18 to 27 and 29 to 32 are withdrawn from further consideration as these claims are drawn to a nonelected invention. No new matter is believed to be added.

### REJECTIONS UNDER 35 U.S.C. § 102/103

#### WO 02/18528

Claims 1, 3, 8 to 17 and 28 stand rejected under 35 U.S.C. § 102(a) as anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as obvious over WO 02/18528 (hereafter Masschelein) for reasons of record at pages 3 and 4 of the Office Action.

Applicants respectfully traverse this rejection to the extent it may apply to the claims as now amended.

Masschelein relates to fabric care compositions comprising cationic silicones. Masschelein does not teach a fabric treatment system comprising a coacervate and an amino silicone as claimed in amended Claim 1.

Since Masschelein fails to teach each and every element of the present invention, Masschelein cannot be held to have anticipated the present invention under 35 U.S.C. § 102(a).

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Additionally, Masschelein provides no suggestion or motivation to one of ordinary skill in the art to modify the Masschelein fabric care compositions to a fabric treatment system comprising a coacervate and an amino silicone.

Since Masschelein fails to teach all the elements of Claims 1, 3, 8 to 17 and 28, it does not anticipate, nor render obvious the pending claims and therefore it is respectfully requested that this rejection be withdrawn.

#### US 6,903,061

Claims 1, 3, 8 to 17 and 28 stand rejected under 35 U.S.C. § 102(e) as anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as obvious over US 6,903,061 (hereafter Masschelein'061) for reasons of record at pages 4 and 5 of the Office Action.

Applicants respectfully traverse this rejection to the extent it may apply to the claims as now amended.

Masschelein'061 relates to fabric care compositions comprising cationic silicones. Masschelein'061 does not teach a fabric treatment system comprising a coacervate and an amino silicone as claimed in amended Claim 1.

Since Masschelein'061 fails to teach each and every element of the present invention, Masschelein'061 cannot be held to have anticipated the present invention under 35 U.S.C. § 102(e).

Additionally, Masschelein'061 provides no suggestion or motivation to one of ordinary skill in the art to modify the Masschelein'061 fabric care compositions to a fabric treatment system comprising a coacervate and an amino silicone.

Since Masschelein'061 fails to teach all the elements of Claims 1, 3, 8 to 17 and 28, it does not anticipate, nor render obvious the pending claims and therefore it is respectfully requested that this rejection be withdrawn.

#### US 2002/0068689

Claims 1, 3, 8 to 17 and 28 stand rejected under 35 U.S.C. § 102(e) as anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as obvious over US 2002/0068689 (hereafter Fender) for reasons of record at page 5 of the Office Action.

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Applicants respectfully traverse this rejection to the extent it may apply to the claims as now amended.

Fender relates to laundry compositions comprising cationic silicones. Fender does not teach a fabric treatment system comprising a coacervate and an amino silicone as claimed in amended Claim 1.

Since Fender fails to teach each and every element of the present invention, Fender cannot be held to have anticipated the present invention under 35 U.S.C. § 102(e).

Additionally, Fender provides no suggestion or motivation to one of ordinary skill in the art to modify the Fender fabric care compositions to a fabric treatment system comprising a coacervate and an amino silicone.

Since Fender fails to teach all the elements of Claims 1, 3, 8 to 17 and 28, it does not anticipate, nor render obvious the pending claims and therefore it is respectfully requested that this rejection be withdrawn.

#### DOUBLE PATENTING

Claims 1, 3, 8 to 17 and 28 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of U.S. Patent No. 6,903,061 (hereafter Masschelein'061) for reasons of record at page 6 of the Office Action.

Applicants respectfully traverse this rejection to the extent it may apply to the claims as now amended.

Applicants respectfully submit that the Office Action has failed to state a *prima facie* case for the obviousness rejection. To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine the reference teachings. See *In re Fritch*, 972 F.2d 1260 (Fed. Cir. 1992); MPEP § 2143.01. Second, there must be a reasonable expectation of success. *In re Vaack*, 947 F.2d 488 (Fed. Cir. 1991); MPEP § 2143.02. Third, the prior art reference or combined references must teach or suggest all the claim limitations. *In re Royka*, 490 F.2d 981 (CCPA 1974); MPEP § 2143.03. Furthermore, in establishing a *prima facie* case of obviousness, case law clearly places

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the "burden of proof on the Patent Office which requires it to produce the factual basis for its rejection of an application under sections 102 and 103." *In re Warner*, 379 F.2d 1011, 1016 (CCPA 1967).

Claim 1, and consequently dependent Claims 3, 8 to 17 and 28, include the limitation that the fabric treatment system comprises a coacervate and an amino silicone. As noted previously, there is simply no disclosure, suggestion or teaching of a fabric treatment system comprising a coacervate and an amino silicone therein in Masschelein'061.

Since Masschelein'061 fails to teach, suggest or disclose all the elements of Claims 1, 3, 8 to 17 and 28, these claims are not unpatentable over Masschelein'061 and therefore it is respectfully requested that this rejection be withdrawn.

#### CONCLUSION

Applicants have made an earnest effort to place their application in proper form and to distinguish their invention from the applied prior art.

WHEREFORE, Applicants respectfully request entry of the amendments presented, withdrawal of the rejections under 35 U.S.C. §102 and 35 U.S.C. §103, reconsideration of the application, and allowance of Claims 1, 3, 8 to 17 and 28.

Respectfully Submitted,

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Date: September 21, 2006  
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